IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5275 of 2004

Between:

1 Ch.Viswanadha Rao S/o.Simhachalam
R/o.K.T.Road, Kothapeta, Vijayawada.
2 Ch.Venkata Ramanjaneyulu S/o.Subba Rao
R/o.K.T.Road, Kothapeta, Vijayawada.

..... PETITIONERS

AND

Municipal Corporation, Vijayawada, rep.by its Commissioner.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, or order or direction more particularly in the nature of writ of mandamus declaring the action of the respondent in seeking to demolish the structure in House No.9-3-11, Brahmin Street, Vijayawada-1 as unconstitutional and consequently direct the respondent to rebuild the demolished portions.

Counsel for the Petitioners : MR.K.S.MURTHY

Counsel for the Respondent : MR.T.S.VENKATARAMANA, SC

The Court made the following :

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O R D E R :

The two petitioners allege that they are tenants in H.No.9-3-11, Brahmin Street, Vijayawada. After the death of the landlady, when some persons claimed the property and started creating trouble, the first petitioner filed a suit being O.S.No.2441 of 2001 and the second petitioner filed O.S.No.363 of 2004 on the file of the Court of the Additional Junior Civil Judge, Vijayawada. The persons claiming the property also filed Rent Control cases being R.C.C.Nos.5 and 6 of 2004 which are still pending. The petitioners allege that on 18-3-2004 the staff of the respondent-Corporation started demolishing upper walls of the first floor. When petitioners approached them, they were informed that the Commissioner has already decided to demolish the house and that the tenants have no say in the matter. Therefore, the petitioners filed the writ petition seeking a declaration that the action of the respondent-Corporation in demolishing the house bearing

No.9-3-11 is illegal and unconstitutional.

This Court while directing the learned standing counsel for respondent-Corporation to get instructions in the matter, ordered *status quo*. Subsequently, on 29-3-2004 the matter was admitted and the interim order passed earlier was extended until further orders. The respondent-Corporation has now moved an application being W.V.M.P.No.1519 of 2004 and filed counter affidavit.

In the counter affidavit, it is stated that complaints were received that the building bearing No.9-3-11 of Brahmin Street, Vijayawada is in a ruinous stage, that plastering and roof of cellar is slogging, and therefore, a notice under Section 456 of Hyderabad Municipal Corporation Act, 1955 (for brevity 'the Act') was served upon the owners of the building requiring them to take action for strengthening the building to prevent collapse. It is stated that except issuing notice under Section 456 read with Section 459 of the Act, the Corporation has not taken any further action. The allegation that the staff of the respondent-Corporation started demolishing the structures is denied. However, the allegation made by the petitioners that no notice

issued to the occupiers has not been specifically denied.

Section 459 of the Act requires the Commissioner to issue notice under Section 456 (1) and (2) to the owner and occupier before taking any action for removing the structures, which are in ruinous or likely to fall. In an unreported judgment of this Court in W.P.No.22095 of 1999, dated 21-2-2002 considering Section 456 and 459 of the Act, this Court held as under.

……But going by the language it must be construed thatit is a notice under Section 459 read with Section 456 (1) and (2). It that be so, it is incumbent on the Commissioner to issue notice to the owner of occupier though the word "or" occurring between 'owner and occupier' cannot be construed either the owner or occupier as cntended by the learned counsel for the second respondent. **Having regard to the serious consequences that will ensue to the occupier like the petitioners, it is reasonable to interpret Section 459 as obliging the Commissioner to issue notice to the owner and also to the occupier (tenant).** It is not the case of the second respondent that a notice was issued to the petitioners.

The petitioners were not admittedly given notice, and therefore, the writ petition is disposed of giving liberty to the respondent-Corporation to issue notice to the petitioners and take appropriate action in the matter. Till this exercise is completed, the respondent shall not demolish the petitioners' house. No costs.

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(V.V.S. RAO, J.)

Dt.07-09-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Municipal Corporation, Vijayawada.

2. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.5275 of 2004

Dt.07-09-2004.

(Msr)